IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

THURSDAY, THE TWENTY SIXTH DAY OF AUGUST
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE SRI DEVINDER GUPTA, THE CHIEF JUSTICE

and
THE HON'BLE Mr. JUSTICE C.V.RAMULU

WRIT APPEAL Nos. 836 AND 744 OF 2004

WRIT APPEAL No. 836 OF 2004

(Writ Appeal under Clause 15 of the Letters Patent against the Order dated 09/01/2003 in WP No. 296 OF 1997 on the file of the High Court.)

Between:

Samudrala Narasaiah Memorial Club, Warangal, rep. by its Secretary, Sri B. Mathyas Reddy,
S/o Arla Reddy, aged 60 years, R/o 11-27-55, SBH Colony, Warangal.

..... APPELLANT

AND

1.The Government of Andhra Pradesh, rep. by its Principal Secretary, Municipal Administration and Urban Development Department, Secretariat, Hyderabad.
2. The Municipal Corporation of Warangal, rep. by its Commissioner.
3. The Commissioner, The Municipal Corporation of Warangal, Warangal.
4. Sri Arvind Rao, Commissioner, Municipal Corporation, Warangal.

.....RESPONDENTS

WRIT APPEAL NO : 744 of 2004

(Writ Appeal under Clause 15 of the Letters Patent against the Order dated 05/03/2004 in Rev.WPMP No. 18296 of 2003 in WP No. 296 OF 1997 on the file of the High Court.)

Between:

Samudrala Narasaiah Memorial Club, Warangal rep.by its Secretary, B.Mathyas Reddy, S/o.Arla Reddy ,R/o.11-27-55, SBH, Colony,Warangal.

..... APPELLANT

AND

1. The Govt. of A.P.rep.by its Principal Secretary, Municipal Administrati and Urban Development Department, Secretariat Hyd.
2. The Municipal Corporation of Warangal, rep.by its Commissioner, Warangal.
3. The Commissioner, The Municipal Corporation of Warangal, Warangal.
4. Sri Arvind Rao, The Commissioner, Municipal Corporation, Warangal.

.....RESPONDENTS

Counsel for the Appellant: Mr.C.V.Mohan Reddy

for Mr.M.Ravindranath Reddy.

Counsel for the Respondent No.1: G.P. for Municipal

Administration & Rural Development.

Counsel for the Respondents 2 to 4: Mr.Ramesh Ranganadhan

for Mr. K.Venugopal Reddy.

The Court made the following :

ORAL COMMON JUDGMENT:

(per The Honourable Sri Devinder Gupta, the Chief Justice)

Dispute pertains to property admeasuring 6713 sq. meters of land situated in Warangal Town. On 21.12.1996, memo was issued by the Government with respect to this property pursuant to which, on 2.1.1997, a notice was issued by the Commissioner, Warangal Municipal Corporation, under Section 636 of Andhra Pradesh Municipal Corporations Act, 1994 to Mr.Samudrala Narasaiah Memorial Club, Warangal as to why the buildings constructed on the land be not removed and possession of land be not taken back. In the said memo the Municipal Corporation, Warangal, observed that there was no allotment of municipal land from Government till date in favour of S.N.M.Club nor there were registered documents relating to ownership of land and buildings were constructed unauthorisedly without the statutory approval from the Warangal Municipal Corporation and the Club authorities in violation of the resolution of the Council dated: 30.7.1988 had not been paying any rental to the Warangal Municipal Corporation. These two events led to two parallel proceedings taken out. Writ Petition No. 296 of 1997 was filed questioning the legality and validity of the memo dated: 21.12.l996 and the notice dated: 2.1.1997. Writ Petition was filed on 16.1.1997, in which, interim order was passed on 17.1.1997 by this Court staying the operation of the memo as well as the notice. This interim order was made absolute on 15.4.1998.

Before the Writ Petition was filed, O.S.No.2 of 1997 on the file of the Principal Senior Civil Judge, Warangal was initially instituted on 3.1.1997 in the High Court. In the suit, the Club had sought for decree for permanent injunction restraining the Municipal Corporation of Warangal, staff, agents, representatives and servants from interfering with the peaceful possession and enjoyment of the suit schedule property bearing No. 16-7-71 including indoor stadium and playground situated at Girmajipet, Warangal, and, along with the suit an application was filed, in which an interim order was passed by the High Court restraining the respondents from interfering with the possession of the Club. Suit was thereafter sent for trial to the Court of Principal Senior Civil Judge, Warangal, in accordance with law.

In view of the aforementioned events, the Club had been in enjoyment of the property, and, the respondents were restrained from interfering with the possession of the Club over the property which was subject matter of the suit, and, also, there was suspension of the notice dated: 2.1.1997.

Suit was dismissed for default on 23.7.2001. An application thereafter was filed for setting aside the order of dismissal and for restoring the suit to its file and also to record a compromise. On 28.6.2002, the order of dismissal of the suit was set aside. Suit was restored to the file and the Court proceeded to record the terms of compromise and decreed the suit in terms of the compromise. Memo of compromise formed part of the decree.

After the suit has been compromised and decree passed, learned Single Judge took up the Writ Petition for hearing, which was disposed of by order dated: 9.1.2004. The said Writ Petition was disposed of on the assumption that there was already a suit filed, which was pending disposal, though the suit stood disposed as per the compromise. Learned Single Judge proceeded to make observation in respect of the title of the petitioner, but, did not record any finding thereupon, but observed that it will be for the petitioner to submit its reply to the notice dated: 2.1.1997 issued by the respondent-Corporation under Section 636 of the Andhra Pradesh Municipal Corporations Act within a period of seven days from the date of the receipt of the order in the Writ Petition and it is for the Municipal Corporation to pass appropriate orders thereupon. The learned Single Judge also observed that the third respondent and the Commissioner of Municipal Corporation, Warangal will appoint forthwith an Officer not below the rank of Assistant Commissioner to administer the operations of the petitioner-club for maintaining accounts and receipt of any dues and incomes and the disposal of the income so administered by the Officer to be appointed by the Commissioner shall depend upon the decision to be taken by the Commissioner on the representation of the petitioner. Pending decision of the Commissioner, petitioner was restrained from making any construction, alterations or additions to the property. The Senior Civil Judge, Warangal was directed to dispose of the suit expeditiously.

As the Writ Petition has been disposed without noticing the decree in the civil suit, it led to filing of review petition by the petitioner and during the pendency of the petition for review, some orders were passed, and, ultimately, Review WPMP No. 18296 of 2000 was disposed of on 5.3.2004. Review Petition was partly allowed and the order dated: 9.10.2003 was confined only in respect of the land to the extent of 4741.71 square meters.

Present appeals were filed by the petitioner questioning the order passed in the Writ

Petition as well as in the Review Petition, and, when the appeals came up for hearing, it was brought to our notice that on behalf of the Municipal Corporation, Warangal, the Municipal Commissioner had filed I.A.No. 267 of 2004 on the file of the Principal Senior Civil Judge, Warangal, for setting aside the compromise decree. Accordingly, we directed the record of the suit to be called and we have perused the record.

We have heard the learned counsel for the parties.

We need not go into the merits of the claims of the parties. But, one fact remains that, as of today, there is a prayer to set aside the compromise decree on terms including the one that it is contrary to the provisions of law and without authority. Learned counsel for the petitioner-Club, which is plaintiff in the suit, rightly and frankly states that without affecting its rights, they have no objection, in case, compromise decree is set aside and parties are relegated to the position existing as on 28.6.2002. In other words, the submission is that suit which was dismissed for non-prosecution be taken as having been restored to the file and that the same will have to be heard and disposed of in accordance with law, as if, there is no compromise between the parties.

The learned counsel for the Municipal Corporation also, and, rightly and frankly, conceded that in view of the order of injunction operating, the Municipal Corporation will not interfere with the possession of the Club, except, in accordance with law, and, will continue to pursue its remedy as regards construction, as notice had already been issued to the plaintiff, and, that, in case, it is permissible, the Municipal Corporation will also apply for vacation/ modification of injunction, and, for that reason, it is stated that Writ Appeals be allowed by setting aside the orders passed in the writ petition as well as Review application with direction to the Club to submit its reply to the notice issued by the Municipal Corporation, Warangal, under Section 636 of the Andhra Pradesh Municipal Corporations Act, on which, appropriate order in accordance with law will be passed by the Corporation after hearing the Club, and, in case, Club would feel aggrieved against any order to be passed, Club can avail of the remedies in accordance with law.

Accordingly, we allow the Writ Appeals setting aside the orders passed in Writ Petition No.296 of 1997 as well as the orders passed in Review WPMP No. 18296 of 2003 and dispose of the Writ Petition No. 296 of 1997 with direction that within a

period of four weeks from the date of the receipt of this order, petitioner-Club will submit its reply to the notice dated: 2.1.1997 issued by the respondent Corporation, on which, respondent-Corporation will pass appropriate orders in accordance with law after hearing the petitioner-Club. In case, petitioner will feel aggrieved against orders to be passed by the respondent- Corporation, it will be open for the petitioner to seek its redressal in accordance with law and till orders are passed by respondent-Corporation, respondent-Corporation will not interfere with the possession of the petitioner-Club in the entire property bearing No. 16-7-71 including indoor stadium and play ground situated at Girmajipet, Warangal, and the Club shall also stand restrained from raising any further construction in the property, except, in accordance with law. Pursuant to our orders, the Administrator of Municipal Corporation shall forthwith restore the property to the petitioner.

With consent of the parties, we allow I.A.No.267 of 2004 filed in O.S.No. 2 of 1997 on the file of the Principal Senior Civil Judge, Warangal, and, thereby proceed to set aside the consent decree passed in O.S.No. 2 of 1997 on 28.6.2002. On setting aside of the said compromise decree, O.S.No. 2 of 2002 shall stand restored to the record of Principal Senior Civil Judge, Warangal along with interim orders of injunction passed in the said suit. The Principal Senior Civil Judge, Warangal, shall now proceed to dispose of the suit in accordance with law. Record of the suit will be sent to the Court of Principal Senior Civil Judge, Warangal, and, parties are directed to appear before the said Court on 20.9.2004.

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DEVINDER GUPTA, C.J.

26.8.2004.

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C.V.RAMULU, J.

VR.

To

1. The Principal Secretary to Govt. of A.P., Municipal Administration and Urban Development Department, Secretariat Hyd.
2. The Commissioner, Municipal Corporation of Warangal,
3. Sri Arvind Rao, The Commissioner, Municipal Corporation, Warangal.

4. Two CCs to Govt. Pleader for Municipal Administration and Urban Development, High Court Buildings, Hyderabad.

5. Two CD copies.